

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.447/04

THURSDAY this the 7th day of July, 2005

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HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

A.K.B.Nair, S/o Kannan Nair, aged 59 years
Office Superintendent, Income Tax Office,
Calicut, residing at Meghavegam, Chevayur,
Calicut.17.Applicant

(By Advocate Mr.M.R.Hariraj)

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1. The Chief Commissioner of Income Tax,
Kochi.
2. Union of India, represented by Secretary to
Government, Ministry of Revenue,
New Delhi.Respondents

(By Advocate Smt.K.Girija)

The application having been heard on 15.6.2005, the Tribunal on
7.7.2005 delivered the following:

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this Original Application while working as Tax Assistant in the respondent department was promoted to the cadre of Head Clerk which post was later re-designated as Assistant on 11.11.94. He was further promoted on ad hoc basis as Supervisor Grade II, later re-designated as Office Superintendent. He was then promoted to the cadre of Income Tax Inspector vide order at

Annexure A.2. The applicant made a representation seeking reinstatement to the cadre of Office Superintendent with loss of seniority but he was told that his case can be considered only if he is reverted to the cadre of Assistant. The applicant gave willingness for the same and was reverted on 19.2.2001. Further he was promoted to the cadre of Office Superintendent vide Annexure A.6 order dated 28.2.01 on a regular basis. The next promotion post from that of Office Superintendent is Administrative Officer Grade. III, for consideration for which three years regular service as Supervisor Grade I (Office Superintendent) is required. The applicant is aggrieved by the non-consideration of his claim for promotion to the cadre of Administrative Officer Grade III on the ground that he has not completed three years of regular service. It is his submission that if his ad hoc service as Office Superintendent from 24.9.97 is taken into account he would be qualified for promotion. It is also his contention that the Recruitment Rules do not provide for reckoning of the qualifying service of a particular date namely 1st January of the year in which the Departmental Promotion Committee (DPC) meets which has been introduced only by administrative instructions. It is submitted that there are four vacancies of Administrative Officer Grade III and the applicant is the seniormost and he is due to retire in April, 2005 and he could be promoted as he became eligible for consideration for promotion on 28.2.04. During the pendency of the Original Application the respondents have rejected the claim of the applicant vide Annexure A.10 and therefore, the applicant has prayed for quashing of the above order and for consideration of his claim for

promotion to the post of Administrative Officer Grade.III reckoning his service as Superintendent on ad hoc basis as regular.

2. In the reply statement filed the respondents have averred that the statement of the applicant that he was fully qualified for regular promotion in the year 1997-98 is factually incorrect. According to them for the financial year 1997-98 there were seven regular vacancies in the cadre of Office Superintendent, out of which only four vacancies were to be filled up from general candidates. In the panel of general candidates the applicant was the 5th person. Hence the four seniors to him have been promoted vide order dated 23.5.97 during the recruitment year 1997-98, one ad hoc vacancy only arose on 31.7.97 when an official working in the cadre of Supervisor Grade II was promoted on ad hoc basis as Inspector of Income Tax. Since an ad hoc vacancy could be filled only by ad hoc promotion, the applicant then the seniormost person was promoted vide Annexure.A.1 order. The respondents have denied that there was any provision in the Recruitment Rules to obtain an option from the feeder categories for promotion to the post of Inspector of Income Tax/Office Superintendent. The applicant was considered for a higher post than that of Office Superintendent, namely Inspector of Income Tax whereas his juniors were considered for promotion to Office Superintendents. Since the applicant found it difficult to discharge his official duties as Inspector due to his health conditions, he requested vide his representation dated 7.9.2000 to reinstate him in the post of Office Superintendent retaining his original seniority. However, he was informed that his request could be considered only

if he is willing to be reverted to the post of Assistant which was the regular post held by him at the time of promotion. Accordingly the applicant had expressed his willingness vide letter dated 14.2.01 (A5) and then he was reverted to the post of Assistant by order dated 19.2.01. When the next vacancy of Office Superintendent arose the applicant was promoted on regular basis as Office Superintendent vide order at Annexure.A.6. Since the applicant joined the post of Office Superintendent on regular basis only on 1.3.01 he will become eligible for promotion only on 1.4.04 since the crucial date for determining eligibility for promotion would fall on 1st January immediately preceding the vacancy year. In the circumstances the claim of the applicant for promotion can be considered only on or after 1.4.05. The respondents have therefore submitted that their action is fully in accordance with the instructions of the Board issued in Board's letters dated 4.6.01 and 20.10.03 (Annexure.R.1 and A9. respectively).

3. No rejoinder has been filed by the applicant.
4. We heard the learned counsel on both sides. On the applicant's side it was argued that the ad hoc service as Superintendent should be considered as regular service in view of the regular service put in by the applicant in the higher post of Inspector which is also equivalent to the cadre of Office Superintendent and that break if any between the ad hoc and regular promotion was caused due to the mistake of the respondents. On the other hand the respondents' counsel argued that the applicant on his own had given his willingness to be reverted to the lower post to

enable him to work in the line of Office Superintendent and at this point of time he cannot fall back on the argument that the mistake was committed by the department. The contention of the applicant that the qualifying service need not be regular in the absence of Recruitment Rules is also not acceptable as the extract of the Recruitment Rules clearly indicates that regular service only could be counted for consideration for promotion which is also reiterated in the Board's instructions at Annexure A.9. The same provision holds good for ad hoc promotions also.

5. The counsel for the applicant also submitted argument notes on the same grounds which have been taken on record.

6. The only issue to be decided in this application is whether ad hoc service rendered by the applicant in the post of Office Superintendent earlier to his being appointed on regular basis to the post should be counted or not for promotion? The main grounds on which the applicant's side relied are that the applicant was eligible to be promoted on regular basis when the respondents appointed him only on ad hoc basis and that the ad hoc service of the applicant was followed by regular appointment and hence is entitled to be granted the entire period of service as qualifying service. None of these grounds appear to be valid as the applicant ^{was} promoted on an ad hoc vacancy and no regular appointment could have possibly been made against an ad hoc vacancy even though he might have been the seniormost at that time. The ad hoc service of the applicant was followed by a regular appointment not in the cadre of Office Superintendent but in a higher cadre of Income Tax Inspector. In

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fact it is stated that Office Superintendent can be promoted as Inspector whereas an Inspector is not eligible for promotion as Office Superintendent. Therefore, the contention of the applicant that these two posts are equivalent and hence service in one can be treated as a regular service for the other cannot be accepted. Moreover, there is a break of almost four years from the ad hoc service rendered by he applicant in 1997 to his regular appointment in 2001. The facts as admitted on both sides point out that during this period the applicant was promoted to a higher post which he accepted and worked for some time but on health grounds he had given his willingness to be reverted to a lower post and hence the contention of the applicant that this break in the period of ad hoc service continued on regular appointment has arisen due to the mistake of the respondents cannot be accepted at all.

7. The next argument advanced by the applicant is that qualifying service cannot be reckoned from any particular date in the absence of any amendment to the Recruitment Rules. It is also not a convincing argument. Recruitment Rules generally provide for the period of regular service required to qualify for the next promotion post. The date for reckoning of the service etc. is dependent on the question when the vacancies arisen are proposed to be filled up and therefore, the instructions relating to the qualifying date are prescribed under the procedures laid down for convening of the Departmental Promotion Committees. Hence the O.M. Dated 17.9.98 referred to by the applicant is of general applicability and is a guideline for the DPCs. It is not necessary to specify the particular

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date in all the Recruitment Rules. Hence for the vacancies arisen for the year 2004-05 DPCs which met in April 2004 for which the qualifying date was 1.1.03 could not consider his case as he qualified for promotion only on 28.2.2004 since he was regularly promoted to the grade of Office Superintendent on 28.2.2001 only. For the year 2005-2006 the applicant would have been eligible for consideration for any vacancy as and when it arose, but he retired in April, 2005 during the pendency of the Original Application itself and he could not be considered. There is no record to show that there was any vacancy which arose prior to April, 2005 on which date the applicant retired.

8. In short, none of the grounds urged by the applicant is valid or tenable in law and the facts on record clearly show that the ad hoc service on which the entire claim of the applicant is based was purely a fortuitous one and does not give him any right for regular promotion. We are therefore of the view that there is no merit in the prayers of the applicant. The O.A. is therefore, dismissed without any order as to costs.

Dated this the 7th day of July, 2005



K.V.SACHIDANANDAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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